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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 535

EDNA L. KEYES, ET AL.,

Petitioners,

vs.

GLADEVIEW DRAINAGE DISTRICT, PALM BEACH COUNTY, FLORIDA, Public Debtor,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioners pray that a writ of certiorari issue to review the holding of the United States Court of Appeals for the Fifth Circuit, entered in this cause.

OPINIONS BELOW

The Amended Final Decree of the District Court (R 103-111) dated April 11, 1957 is unreported and is printed in Appendix B hereto, page B-1.

The opinion of the Court of Appeals is dated June 30, 1958. (R 121-128). The opinion of the Court of Appeals as modified by an order dated August 26, 1958 denying a rehearing is reported in 258 F. 2d 273, and a copy of the opinion as modified is printed in Appendix B hereto, page B-8. The Order modifying said opinion and denying rehearing is printed in Appendix B hereto, page B-15. A Judgment has been entered (R 129) and is printed in Appendix B hereto, page B-17.

JURISDICTION

The opinion of the Court of Appeals upon order denying rehearing was dated August 26, 1958.

Jurisdiction to issue the writ rests on Title 28, U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS DECIDE A FEDERAL QUESTION IN A WAY IN CONFLICT WITH AN APPLICABLE DECISION OF THIS COURT?

II. DID THE COURT OF APPEALS IN THE ABSENCE OF A PROVISION IN THE BANKRUPTCY ACT WHICH DECLARES, IN TERMS, THAT THE OFFER OF THE PLAN OF COMPOSITION EXTENDS ONLY TO THOSE WHO FILE AND PROVE THEIR CLAIMS EVEN THOUGH THE DEBTOR TAXING UNIT ADMITS THE CLAIM AND SCHEDULES THE SAME IN THE PROCEEDINGS ERR IN REVERSING THE DISTRICT COURT ORDER DIRECTING PAYMENT OF REFUNDING BONDS TO THE PETITIONER?

III. DID THE COURT OF APPEALS DECIDE AN IMPORTANT QUESTION OF FEDERAL LAW NOT PREVIOUSLY RULED UPON BY THIS COURT OR ANY OF THE SEVERAL COURTS OF APPEAL?

IV. DID THE COURT OF APPEALS ERR IN UPHOLDING AS VALID A MUNICIPAL DEBT COMPOSITION PROCEEDING WHEREIN THE DEBTOR TAXING UNIT'S PLAN OF COMPOSITION AND THE PROCEEDINGS HAD THEREUNDER INTENDED TO AND DID PROVIDE ONLY SUFFICIENT REFUNDING BONDS TO EXCHANGE FOR THE CLAIMS OF THOSE CREDITORS WHO FILED PROOFS OF CLAIM ON OR BEFORE THE DATE SET IN THE NOTICE TO CREDITORS OR PRIOR TO THE ENTRY OF A FINAL DECREE AS LATER DIRECTED BY THE COURT IN AN UNPUBLISHED ORDER?

V. DID THE COURT OF APPEALS ERR IN HOLDING THAT THE PERIOD PROVIDED FOR IN THESE PROCEEDINGS FOR EXCHANGING CLAIMS FOR REFUNDING BONDS WAS NOT SO SHORT AS TO CONDEMN THE COMPOSITION PROCEEDINGS AS LACKING DUE PROCESS OF LAW?

STATUTES INVOLVED

The Federal Statute involved in these proceedings is Title 11, U.S.C., Section 403, the pertinent portions of which are printed in Appendix A hereto, page A-__.

STATEMENT OF THE CASE

For convenience and clarity, Edna L. Keyes will be referred to as the petitioner or bondholder as she was in the District Court. Similarly, Gladeview Drainage District will be referred to as the debtor district or taxing unit.

This cause was commenced by the filing of a petition by the bondholder on January 11, 1955 seeking an order directing that the debtor district exchange her bonds for refunding bonds to be issued pursuant to a plan of composition in municipal debt composition proceedings in the bankruptcy court. The petition (R 60) sought a modification of the final decree in said proceedings since said decree was dated June 27, 1952 and barred participation in the refunding plan by any creditors who had not filed claims prior to its entry. Motions, defenses, and a deposition of the petitioner were filed by the debtor district. The controversy was heard by the district upon a written stipulation of the facts, (R 90). The District Court by an amended final decree granted the bondholder's petition and directed the taxing unit to exchange her bonds on the same terms accorded those bondholders who filed proofs of claim during the pendency of the proceedings.

The facts giving rise to the Court's conclusions of law and decision have been stipulated to (R 90-97) and must be briefly set forth to present an accurate and clear picture of the situation involved.

The petitioner is the owner of $5,000.00 in face value of bonds of Gladeview Drainage District together with various unpaid interest coupons therefrom, all of which had matured by June 1, 1944. These bonds were ac-

quired from her mother who died on November 17, 1952. The bonds came from her father's estate in 1933. The mother died at the age of eighty-two and had been an invalid and senile since 1945. The petitioner received the bonds from the executor of her mother's estate on January 12, 1954 but no inquiry or demand for payment was made upon the debtor district until October 25, 1955. The taxing unit refused payment, relying on the decrees of the bankruptcy court, and this action was commenced on January 11, 1956.

Gladeview Drainage District defaulted in the payment of bonded indebtedness in 1927 and remained in default until 1952.

On October 23, 1951 the debtor district filed in the bankruptcy court a Petition for the Approval and Confirmation of a Plan of Composition wherein it sought to compose its debt of approximately $475,000.00 by exchanging with its creditors refunding bonds equal to about 69% of the claims on the original bonds. Scheduled with the district's debt was the claim on the bonds of the petitioner. Filed with the petition and plan were the written consents of three creditors owning 89% of the claims, all of whom had reduced their claims to judgments.

The plan of composition provided that refunding bonds would be issued only to refund the claims of those who filed proofs of claim prior to the time set for filing claims (R 9-10). On the date of the filing of the petition and plan the Court entered an order approving the filing and the form of a notice to creditors and method of publication thereof. The notice to creditors set January 11, 1952 as the date for considering the merits of the

plan and any objections filed thereto. This notice further provided (R 21) that to receive refunding bonds under the plan creditors must file sworn proofs of claim on or before ten days prior to January 11, 1952.

On January 11, 1952, no additional proofs of claims having been filed, the bankruptcy court entered its Interlocutory Decree approving the plan directing that the unknown holders of the bonds scheduled, in order to participate in the plan, must tender said securities for exchange prior to the entry of the final decree. (R 53).

On January 28, 1952 the debtor district instituted bond validation proceedings for an issue of refunding bonds in an amount sufficient only to refund 89% of its debt filed on by the three judgment-holding creditors at the time of filing the petition and plan. (R 94).

On March 3, 1952 a validation decree was obtained, which decree was upheld by a Supreme Court of Florida decision dated June 3, 1952 noting that the refunding issue was for the purpose of refunding indebtedness represented by judgments. *59 So. 2d 359.*

On June 27, 1952, none but the original three creditors having appeared and filed claims, the bankruptcy court entered a final decree directing that only those creditors who had filed claims shall participate in the plan and receive the refunding bonds therein described, the bonds described being only sufficient to pay off the three judgment holders. (R 95).

In granting the bondholder her petition the District Court based its decision on the following Conclusions of Law contained in the Amended Final Decree (R 107-109):

* * *

"4. The Court is of the opinion that the time periods provided for the creditors filing their claims and exchanging their bonds as contained in the Debtor District's Petition and Plan of Confirmation, Notice to Creditors and Interlocutory Decree were not sufficient to protect the rights of the creditors, particularly in view of this District's history of default and, therefore, void as to this Petitioner.

"5. The Court is of the firm belief that to sanction this District's bankruptcy proceeding with respect to the inadequacy of the time periods provided for the filing of claims and the participation on the part of the creditors, and the failure to provide any period for exchange of bonds in the Final Decree, would amount to a perpetuation of a gross inequity with respect to this Petitioner, a result never intended by the framers of the Municipal Debt Composition provisions of the Bankruptcy Act.

"6. No basis exists in law or equity to completely extinguish a lawfully contracted debt owed by a local improvement district because a creditor, who had no notice of the Chapter IX Proceeding, failed within a very short specified period of time to exchange the original certificate of indebtedness for the new one, in a lesser amount, issued pursuant to the Chapter IX Proceeding. To so cancel that debt would be to deprive a creditor of his property without due process of law; and would be to deny him equal protection of the law in that his debt would be treated differently from the other creditors of the same class who exchanged their certificates of indebtedness within the time ordered.

"In view of the fact that securities such as the ones in question are widely held by conservative investors, such as widows who have no ready con-

tacts with the debtor, the only equitable method would be to order the issuance of the refunding bonds to all bondholders of record, limiting the time for exchange to the expiration of the statute of limitations on the enforcement of the original bonds. For the Court to attempt to require bondholders, with or without notice, to exchange their bonds within a period of time less than the statute of limitations on the original bond issue, would amount to "Court legislation" impairing the obligations of the original contracts, and would give the bankrupt an advantage of total cancellation of part of its debt, without any proof of any such need in order for it to effect a compromise, and indeed contrary to the proof offered."

* * *

The debtor district appealed and in an opinion effective August 26, 1958, upon denial of rehearing, the Court of Appeals reversed the District Court. In ruling, the Court of Appeals approved the proceedings as having complied with the statutes and as constituting due process of law, thereby making the final decree res judicata as to the petitioner. The Court of Appeals specifically found that the period of time provided for filing claims in this proceeding was not so short as to condemn the proceeding as lacking due process.

As a necessary corollary to its conclusion the Court of Appeals has ruled that the offer of a plan of composition under Municipal Debt Composition proceedings extends only to those who prove their claims within a relatively short period of time, even though the debtor admits and schedules the claim and that those failing to so prove can be barred from participation.

REASONS FOR ALLOWANCE

POINT I.

The petitioner believes that the Court of Appeals decided a Federal question in a way in conflict with an applicable decision of this Court when its decision necessarily holds that the offer of a plan of composition in municipal debt composition proceedings extends only to those creditors who prove their claims within a specified period even though the debtor taxing unit admits the claim and schedules the same in the proceedings. (Questions Presented I, II).

This holding finds no sanction in the bankruptcy law or in any reported decision. Such a holding is completely repugnant to the entire concept of municipal debt composition or readjustment and is contrary to a decision of this Court dealing with the composition of corporate indebtedness. If allowed to stand, this ruling injects into municipal composition a time element not provided for by the Act nor intended by Congress. It creates an advantage for debtor taxing units by providing a method of complete cancellation of a portion of their debt which they admit they owe and can pay on a reduced bases or on extended terms. By careful timing taxing units under this decision, can, within the terms of the Act, void the negotiable bearer bonds of the unsuspecting minority even though they admit liability and ability to pay on the same terms offered the majority.

Such has not been the concept of composition proceedings in the opinion of this Court in an instance involving corporate indebtedness under the Bankruptcy Act. In *Nassau Smelting & Refining Works v. Brightwood Bronze Foundry Company*, 265 U.S. 269, 68 L. ed.

1013, 44 S.C. 506, a creditor petitioned to participate in corporate composition proceedings after the expiration of what the debtor claimed was a one year claim-proving period. Due process of law with reference to notice was complied with for this Court found that the tardy creditor had due notice of all proceedings, and its claim had been scheduled by the debtor. In a fully reasoned opinion by Justice Brandeis, this Court, held that barring a provision in the Act which declares, in terms, that the offer of composition extends only to those who prove their claims within the period provided, for in ordinary bankruptcy, creditors with scheduled claims should be provided for and participate even though they fail to file proofs of claim.

There is no provision in the Act for barring creditors in municipal composition proceedings, nor, as this Court reasoned in the *Nassau Smelting* case, is there a need for one. The composition of the debts of taxing units is, in a sense, outside of bankruptcy proceedings because there is no adjudication and, therefore, no bankruptcy. The offer is voluntarily made by the debtor to all of its admitted and scheduled creditors. When voluntarily accepted by a majority of the creditors, the plan's confirmation binds creditors with scheduled claims even though they do not prove. Why, then, should proof be essential to participation?

The purpose of a proof of claim is to qualify one, by its allowance, to vote on the question of acceptance of the plan. But after the composition is confirmed, allowance is not necessary for the purpose of establishing the claim against the debtor, who is then alone interested, if he has already admitted liability by including it in his schedule. *Nassau Smelting v. Brightwood Bronze,* supra.

In ordinary bankruptcy a time period for proving claims is important to the creditors, for distribution cannot be made until its expiration, and the lesser amount of claims allowed the greater the dividend. Where there is a composition, however, neither the amount which a creditor receives nor the time when he receives it can be affected by the amount of others' claims, or by the time of proof or by their failure to prove. The rights of each creditor are fixed by the terms of the debtor's offer, subject only to confirmation by the Court. Nor can the time of proofs of claim be of legitimate interest to the debtor, for where he has admitted the claim his rights also are fixed by the offer.

As pointed out by the Court in the *Nassau Smelting* case, supra, no reason is suggested why Congress should have wished to bar creditors from participation in the benefits of composition merely for their failure to prove. Failure to prove, where a valid offer is made, does not hurt the debtor. Why should he gain thereby? And why should the creditor be penalized by a total loss of his claim?

Space does not permit citing the instances wherein the foregoing principles have been upheld in corporate reorganization proceedings. Should not they be applied to public corporations when the Act does not indicate that the creditors of taxing agencies are to be accorded any lesser degree of protection?

POINT II.

The Petitioner believes that the Court of Appeals decided an important question of Federal law not previously ruled upon by this Court or any of the several

courts of appeal when its decision upheld as valid a municipal composition proceeding wherein the plan of composition intended to and did provide only sufficient refunding bonds for those creditors who filed proofs of claim prior to the date set in the notice to creditors or the entry of the final decree as later directed by the Court in an unpublished order. (Questions Presented III, IV).

Much of the argument set forth under Point I is applicable to this complaint. However, the main purpose of posing the question thusly is to point out that Chapter IX does not provide for or contemplate a plan of municipal debt composition whereby only the known and most observant creditors participate and the others are completely barred. The plan in this instance specifically provided (R 6, 9) that only refunding bonds would be issued for the claims of those creditors who filed proofs of claim within a period designated by the Court.

The petition was filed on October 24, 1951, and the period for filing according to the published notice to creditors expired on January 1, 1952 (R 21), a claim-filing period of slightly more than two months. The District Court in its Interlocutory Decree extended the period for participation to an indeterminate date, the date of entry of a Final Decree. (R 55). The debtor district, almost immediately, proceeded to issue only sufficient bonds to take care of the needs of the three judgment holders who accepted the plan prior to its filing. Because of the time required by an appeal to the Supreme Court of Florida validating the refunding issue, the Final Decree was not entered until June 27, 1952. Thus, the district, after successfully evading payment

of its obligations from 1927 to 1951, in a period of some eight months successfully barred this claim then held by an eighty-two year old widow living in Ohio who had unfortunately not read three successive weekly editions of the Palm Beach Post published in Palm Beach, Florida, or the Bond Buyer published in New York. (R 24, 25).

This was a result which could not be achieved by a debtor under any of the other chapters of the Bankruptcy Act providing for composition, arrangements or reorganizations. All of the other chapters of the Act dealing with these phases of bankruptcy, Chapters X, XI and XII, specifically provide that in confirming such proceedings *"creditors who have not filed are to participate provided the debtor has scheduled the claim and it is not contingent, unliquidated or disputed."* Municipal bankruptcy, while containing no express provision for those failing to file, is given a practical and reasonable construction, contemplates a plan in which all creditors are to receive something in exchange for their claims. The term "plan of composition" as defined by Chapter IX calls for a plan whereby the rights of creditors shall be modified or altered, not cancelled. If Congress had intended that only those appearing were to participate such a provision could and should have been expressly stated.

To sanction a plan of composition providing only for those appearing within a relatively short period of time is tantamount to a holding that the appraised value of land need not be deposited in Court in eminent domain proceedings when the property owner fails to respond to notice. To sanction such a procedure is an invitation to countless taxing units to void sizeable portions of

their debt through expedient use of the bankruptcy courts should the occasion arise. Can a plan such as this meet the test as laid down by this Court in *American United Mutual Life Insurance Company v. City of Avon Park,* 311 U.S. 138, 85 L. ed. 91, 61 S.C. 157. Can this Court be satisfied that this plan of composition was "devoid of overreaching" or was it such that there was "need for protection of investors against an inside few"? (Both quotations from the *Avon Park* case, page 96 of 85 L. ed.)

The Court of Appeals based its opinion largely on *San Augustine County, Texas v. Cameron Water Improvement District,* 202 F. 2d 932. But that case did not result in barring the late-appearing creditor recovery on his claim because the opinion sanctioned as a valid exercise of discretionary power the lower court's allowing recovery by the creditor after the expiration of a period provided for in a final decree. *San Augustine County,* supra, is therefore, not a precedent controlling the instant case.

In its opinion the Court of Appeals dismissed as not being applicable the decision in the case of *Bekins v. Compton-Delevan Irrigation District,* 150 F. 2d 526, certiorari denied 326 U.S. 772. But, again, in the *Bekins* case, recovery was allowed by the Court of Appeals because it felt that to deny recovery would lead to a grossly inequitable result—the retention by the debtor of that which obviously belonged to the creditor. Again, the *Bekins* case, supra, cannot be considered a precedent controlling the instant matter.

POINT III.

The petitioner feels that the Court of Appeals erred in holding that the period provided for in these proceedings for exchanging claims for refunding bonds was not so short as to condemn the condemnation proceedings as lacking in due process of law. (Questions Presented V).

In its opinion the Court of Appeals stressed the fact that it was the publication of notice which was important and not the period given in which claims may be filed that constituted due process. It then concluded that a period of five months provided in these proceedings was not so brief as to condemn the whole proceeding as lacking in due process.

Sanctioning a period of some five months as constituting due process in proceedings such as composition is contrary to all of the statutory provisions concerning compositions involving private corporation reorganization. Congress has fixed a five-year period as the minimum time for barring claims in corporate reorganization, 11 U.S.C. Sec. 704, and, in addition, has deemed that the fixing of such a five-year period is within the Court's discretion. Barring an express provision in municipal bankruptcy providing for a time period within which to participate, can it be logically held that Congress intended that the creditors of public taxing agencies should be accorded any lesser protection?

It is true that in these proceedings the statutory notice was published, but due process of law includes more than mere notice and it can be violated when a proceeding amounts to a mere arbitrary or capricious exercise of power or is in clear conflict with those funda-

mental principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. *12 Am. Jur., Constitutional Law, Sec. 577, p. 274.*

CONCLUSION

The Court of Appeals' holding is clearly contrary to the decision of this Court in *Nassau Smelting & Refining Works v. Brightwood Bronze Foundry Company*, supra. Its upholding as valid a composition which did not intend to and did not provide for all creditors was an erroneous ruling on a Federal question not previously ruled upon which should be corrected by this Court. The Court of Appeals' upholding the periods of time provided for as constituting due process of law was erroneous and a departure from the accepted course of judicial proceedings.

Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

11 USC, Section 403. Composition—Petition; plan of composition; creditors.

"(a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of this title, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) have accepted it in writing. There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate andresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

"Whenever the petition seeks to effect a plan for the composition of obligations represented by securities, or evidences in any form of rights to payment, issued by the petitioner to defray the cost of local governments and which are payable solely out of the proceeds of special assessment or special taxes levied by the petitioner, or issued by the petitioner to finance one or more revenue-producing enterprises payable solely out of the revenues of such enterprise or enterprises, it shall be sufficient if the petitioner aver that the property liable for, or the revenues pledged to the payment of such securities, principal, and interest is not of sufficient value, or that the revenues of the enterprise or enterprises are inadequate to pay same, and that the accrued interest on such securities is past due and in default; and the list of creditors to be filed with such petition need contain only the known claimants of rights based on those securities evidencing the obligations sought to be composed under this chapter, and such list shall include separately the names and addresses of those creditors who have accepted the plan of composition. * * *

"The 'plan of composition', within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire. * * *

"(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being

properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed, at least sixty days before the date fixed for the hearing. * * *

"(f) In an interlocutory decree confirming the plan is entered as provided in subdivision (e) of this section, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan, shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that

the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it."

* * *

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 2623-M-Bank.

In the Matter of:)
GLADEVIEW DRAINAGE DISTRICT,)
PALM BEACH COUNTY, FLORIDA,)
Public Debtor.)

AMENDED FINAL DECREE

The Court by an Order dated December 28, 1956, granted the Petition of Edna L. Keyes and directed that the bonds of Edna L. Keyes (being five (5) $1,000.00 Gladeview Drainage District and Road Bonds, 6% dated June 1, 1923, bonds numbered 108 to 110 inclusive and 116 and 117, all maturing June 1, 1944 and each with coupons maturing December 1, 1927, and one each six months thereafter until maturity attached) be exchanged by the District for "new bonds" to be issued by said District as part of that certain issue of bonds dated June 1, 1951, and known as Gladeview Drainage District Refunding Bonds, issue of 1951, which "new bonds" are to mature no later than June 1, 1981. Said Order further directed that the Final Decree in this proceeding be amended to incorporate the terms of said Order, the purpose of amending the Final Decree being to effectuate and facilitate the issuance of the additional bonds of the refunding issue of 1951 to be exchanged for the claim of the Petitioner, Edna L. Keyes, on the five (5) bonds of the 1923 issue on the same basis as were the claims of other judgment-bond holders during the course of the proceedings in 1952.

The Court, therefore, to implement its Order dated December 28, 1956, and for the purpose of effectuating the issuance of the additional bonds to be exchanged for the claim of the Petitioner, Edna L. Keyes, after having considered the cause, pleadings and arguments of Counsel and particularly the Stipulations of the parties as to the pertinent facts pertaining to the Petition of Edna L. Keyes, and the Answer thereto of Gladeview Drainage District and Shawano Development Corporation, does hereby find therefrom as follows:

FINDINGS OF FACT

I.

The Court, by reference, adopts as part of these Findings of Fact the "STIPULATION PERTAINING TO PETITION OF EDNA L. KEYES AND THE ANSWERS THERETO OF GLADEVIEW DRAINAGE DISTRICT AND SHAWANO DEVELOPMENT CORPORATION", filed on August 6, 1956, as the uncontroverted facts concerning this matter.

II.

That on December 28, 1956, the Court, having considered the above referred to Stipulation together with other matters of record and the brief of the Petitioner, Edna L. Keyes, the only brief filed pursuant to the Court's directions for filing of briefs by the respective parties, granted the Petition of Edna L. Keyes and directed Gladeview Drainage District to exchange the bonds of Edna L. Keyes for new bonds of the refunding issue, issued pursuant to these proceedings.

III.

The claim on the five (5) bonds of Edna L. Keyes, above described, including bond principal and interest after maturity, as well as coupon principal and interest

thereon after maturity, amounts to Sixteen thousand Eight hundred Sixty-six and 50/100 ($16,866.50). Dollars. Interest after maturity on both bonds and coupons is computed at the rate of 6% per annum to June 1, 1951, the claim computation date provided for by the Plan of Composition.

The percentage of this sum to be refunded according to the Plan is 69.17103 and amounts to Eleven thousand Six hundred Sixty-six and 73/100 ($11,666.73) Dollars. Since no refunding bonds were issued in sums less than One hundred and No/100 ($100.00) Dollars, the claim of Edna L. Keyes is to be refunded for new bonds of the 1951 issue in the amount of Eleven thousand Six hundred and No/100 ($11,600.00) Dollars, and cash in the sum of Sixty-six and 73/100 ($66.73) Dollars. Interest on said Eleven thousand Six hundred and No/100 ($11,600.00) Dollars of "new bonds" has and is accruing at the rate of One and 45/100 ($1.45) Dollars per day from June 1, 1951. The Debtor District is given the option of paying this accrued interest in cash on or before one hundred twenty (120) days after the date on which this Amended Final Decree becomes final, or issuing additional refunding bonds as of that date bearing interest at the rate of four percent (4%) per annum to provide for the payment of said accrued interest. The Petitioner, under the terms of said Plan, is required to pay the exchange fee of four percent (4%) of the amount of refunding bonds to be received by her at the time she receives the said refunding bonds, which exchange fee amounts to Four hundred Sixty-four and No/100 ($464.00) Dollars.

CONCLUSIONS OF LAW

That from the foregoing findings of fact the following conclusions of law are made:

I.

That the Court has jurisdiction of the Petition of Edna L. Keyes and the authority to grant the relief requested therein.

II.

That the Petition of Edna L. Keyes states a claim upon which relief can be granted.

III.

That the pleadings of the Debtor, Gladeview Drainage District, and Shawano Development Corporation, both entitled "ANSWER INCORPORATING MOTION TO DISMISS AND TO QUASH ORDER TO SHOW CAUSE", contain no defense which, in view of the evidence submitted, are sufficient to bar the relief requested by the Petitioner. With respect to said Answers the Court specifically finds:

a. That Federal Rule 60(b) is not applicable to this Petition in this bankruptcy proceeding.

b. That the defense of laches contained in said Answers is not, in view of the evidence submitted, sufficient to bar the relief requested.

c. That the defense of intervening vested rights as contained in said Answers, in view of the evidence submitted, has not been sufficiently alleged or proven to the extent necessary to bar the relief requested by the Petitioner.

d. That all other matters asserted by way of defense in said Answers are either insufficient as a matter of law or have not been sufficiently proven to warrant the denial of the relief requested by the Petitioner.

4. The Court is of the opinion that the time periods provided for the creditors filing their claims and

exchanging their bonds as contained in the Debtor District's Petition and Plan of Confirmation, Notice to Creditors and Interlocutory Decree were not sufficient to protect the rights of the creditors, particularly in view of this District's history of default and, therefore, void as to this Petitioner.

5. The Court is of the firm belief that to sanction this District's bankruptcy proceedings with respect to the inadequacy of the time periods provided for the filing of claims and the participation on the part of the creditors, and the failure to provide any period for exchange of bonds in the Final Decree, would amount to a perpetuation of a gross inequity with respect to this Petitioner, a result never intended by the framers of the Municipal Debt Composition provisions of the Bankruptcy Act.

6. No basis exists in law or equity to completely extinguish a lawfully contracted debt owed by a local improvement district because a creditor, who had no notice of the Chapter IV Proceeding, failed within a very short specified period of time to exchange the original certificate of indebtedness for the new one, in a lesser amount, issued pursuant to the Chapter IV Proceeding. To so cancel that debt would be to deprive a creditor of his property without due process of law; and would be to deny him equal protection of the law in that his debt would be treated differently from the other creditors of the same class who exchanged their certificates of indebtedness within the time ordered.

In view of the fact that securities such as the ones in question are widely held by conservative investors, such as widows who have no ready contacts with the debtor, the only equitable method would be to order the issuance of the refunding bonds to *all bondholders of record,* limiting the time for exchange to the expiration of the statute of limitations on the enforcement of the original bonds. For the Court to attempt to require bondholders, with or without notice, to exchange their

bonds within a period of time less than the statute of limitations on the original bond issue, would amount to "court legislation" impairing the obligations of the original contracts, and would give the bankrupt an advantage of total cancellation of part of its debt, without any proof of any such need in order for it to effect a compromise, and indeed contrary to the the proof offered.

WHEREFORE, IT IS ORDERED AND DECREED, that for the purpose of providing the Petitioner with the bonds that she is entitled to, as well as for the purpose of facilitating the issuance of said bonds, the Final Decree in this cause dated June 27, 1952 is hereby amended to exclude anything contrary to the following and to include the following:

IT IS FURTHER ORDERED AND ADJUDGED

1. That Gladeview Drainage District pay the claim of Edna L. Keyes based on the bonds and coupons above described in the cash amount of Eleven thousand Six hundred and No/100 ($11,600.00) Dollars with interest thereon at the rate of four percent (4%) from June 1, 1951 within one hundred twenty (120) days of the date this amended Final Decree becomes final, together with the sum of Sixty-six and 73/100 ($66.73) Dollars, or, in the alternative,

2. That the District issue, have judicially validated and procure a bond approving opinion of a nationally recognized New York bond approving attorney and tender for exchange of the Edna L. Keyes claim an additional amount of refunding bonds of the 1951 issue sufficient to refund her claim on the same basis and terms as it would have been refunded in 1952, to wit: Eleven thousand Six hundred and No/100 ($11,600.00) Dollars of bonds dated June 1, 1951, in denominations of eleven (11) $1,000.00 bonds, one (1) $500.00 bond and one (1) $100.00 bond, all bearing interest at the rate of four percent (4%) per annum, and maturing as nearly as possible at equal intervals between that period

beginning one hundred twenty (120) days after this amended Final Decree becomes final and June 1, 1981, and the interest, in cash, on Eleven thousand Six hundred and No/100 ($11,600.00) Dollars of bonds from June 1, 1951 at four percent (4%) to a date one hundred twenty (120) days after this amended Final Decree becomes final, together with cash in the sum of Sixty-six and 73/100 ($66.73) Dollars, or, at the option of the District, additional refunding bonds to provide for payment of any portion of this accrued interest and the remainder in cash.

3. That the Petitioner, Edna L. Keyes, at the time tendered either cash or bonds as provided for in Paragraphs 1 and 2 above, pay the exchange fee of Four hundred Sixty-four and No/100 ($464.00) Dollars to the District.

4. That the District, in the event it elects to issue additional refunding bonds to pay the Petitioner's claim; within thirty (30) days of the date this amended Final Decree becomes final, institute validation proceedngs in the Circuit Court of Palm Beach County and diligently pursue said proceedings to the end that a validation decree will give to said additional refunding bonds the same dignity as is accorded the original bonds of the 1951 refunding issue. All costs attending the validation, issuance, printing and procurement of an opinion approving said bonds, shall be borne by the District.

5. That the District is authorized by law and directed to take all action necessary to have said additional bonds issued as well as to make such additional tax levies on the lands in said District as are necessary to provide for the payment of both principal and interest on said additional bonds.

6. That it is the express intent of this Court that the claim of Edna L. Keyes be either refunded or paid in cash within one hundred twenty (120) days of the

date this amended Final Decree becomes final. For this reason the Court retains jurisdiction of this cause so long as it may be necessary to carry out the provisions of this amended Final Decree.

DONE AND ORDERED in Chambers at Miami, Florida, this 11th day of April, 1957.

EMMET C. CHOATE,

United States District Judge.

GLADEVIEW DRAINAGE DISTRICT, PALM BEACH COUNTY, FLORIDA
Public Debtor, Appellant,

v.

EDNA L. KEYES, et al., Appellees

No. 16748.

United States Court of Appeals
Fifth Circuit
June 30, 1958.

As Modified on Denial of Rehearing
Aug. 26, 1958.

Before CAMERON, JONES and BROWN, Circuit Judges.

CAMERON, Circuit Judge.

Before us here is the question of the validity of an order entered by the District Court requiring the exchange of "new" bonds for bonds of a Florida drainage district which had, more than three years before the present action was begun, been canceled by the court

below in a Composition Proceeding under Chapter IX of the Bankruptcy Act as amended (11 U.S.C.A. §§401—403). The order here appealed from purported to amend the final decree in the original proceedings and directed appellant, Gladeview Drainage District, to exchange five $1,000.00 bonds, long since matured, for new refunding bonds to be issued by appellant, when no claim had been filed in the bankruptcy proceeding within the time fixed by the court's order.

Said decree was entered pursuant to a petition filed January 11, 1956 by appellee, Edna L. Keyes, alleging that she was a citizen of Ohio and had inherited from her mother five $1,000.00 "Gladeview Drainage District and Road Bonds" which had matured June 1, 1944. She averred that her demand upon appellant for new bonds had been refused on the ground that the final decree of the court below had canceled and annulled said bonds. She averred further that the bankruptcy proceedings relied upon by appellant were invalid and without effect, but without assigning any specific grounds for the claimed invalidity.

Appellant moved to dismiss the petition on the ground that it failed to state a claim upon which relief could be granted and answered, setting forth in detail the court proceedings which had culminated in the final decree entered June 27, 1952, which canceled the original issue of bonds, including those held by petitioner. The controversy was heard by the court below upon written stipulation of the parties, the pertinent portions of which follow:

The appellant Drainage District was in default on its entire indebtedness for more than twenty-two years following the year 1929; and on October 24, 1951, it filed in the court below its petition under said Chapter IX for the approval and confirmation of a plan of composition therein set forth. On the following day, the court entered its order approving the filing of the petition, directing that notice by publication be given to creditors

and security holders, and setting a hearing on January 11, 1952. The notice was duly published as provided by the order of the court and in conformity with the statute, and appellee does not charge that it was in any way defective. It required all creditors and security holders of the District to file sworn proofs of claim by the last mentioned date, and appellee's mother, who then held the bonds, did not file any claim. The District Court, therefore, entered its order on January 11, 1952 confirming the plan and requiring the holders of any securities upon which proofs of claim had not been filed to tender their securities prior to the entry of a final decree, or be barred from participation in the plan.

Thereupon, January 28, 1952, appellant began a proceeding in a Florida State Court in which a decree of validation of the new bonds issued pursuant to said plan was entered. An appeal was taken to the Supreme Court of Florida, which, on June 3, 1952, affirmed the order validating the issue of refunding bonds in an amount sufficient to cover the claims filed in the bankruptcy proceedings.

Thereafter, on June 27, 1952, the court below entered its final decree canceling the claims of all creditors and security holders of the District other than those who had seasonably proved their claims, and enjoining them from asserting further claim upon the unproven securities. The decree here appealed from was, as above set forth, rendered in the original bankruptcy proceedings and amended the final decree which the court had entered June 27, 1952.

Appellee urged before the court below and before us that the decree wiping out the unproven claims was against the letter and spirit of said Chapter IX which, she argues, does not contain any provision specifying a time period for the filing of claims by creditors; and that the decree entered by the court below June 27, 1952, canceling all outstanding claims not filed and enjoining further prosecution of them, was invalid. The factual

basis, as set forth in the stipulation upon which the claim for equitable relief was based, was that appellee acquired the bonds January 12, 1954, by inheritance from her mother; that from April, 1945, until her death, November 17, 1952, her mother had been childish and senile; that the only claims filed in the original Chapter IX proceedings were by three creditors owning 89% of the District's debts, all represented by judgments; and that the entire issue of refunding bonds was received by said creditors in exchange for their judgments. These facts, appellee urges, establish a species of subtle fraud from which she should be protected.[1]

Appellant, in turn, contends that the Chapter IX proceedings were regular in every way, that the law itself is valid, and that the decree canceling the claims not filed pursuant to the proceeding constituted an effective bar to the claim presented by appellee. Appellant also brings in some equitable considerations, such as the transfer of some of the refunding bonds since their issue, that the land constituting the District had changed hands and had acquired much greater value since the composition was approved, that the District was without funds with which to pay the claim of appellee, and that the taxing authorities had levied sufficient tax only to comply with the final decree of the court dated June 27, 1952.

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[1] Her brief refers to the original bankruptcy proceedings in these words:

"The dispatch with which these proceedings were prosecuted was not mere happenstance; it was the result intended by the man who owned a vast majority of the lands in the District * * *, approximately 20% of the debt, and who was, in addition, the President of the Board of Supervisors of the District * * *. He had to obtain the consents of the nonland-owning holders of nearly 70% of the debt in order to put the composition proceedings through. He agreed to pay so much per acre and the two largest creditors agreed to take it. The other creditors, the 10% or so not holding claims in the form of judgments, if allowed to participate, would have complicated matters for the landowner, thus this plan and its speedy conclusion."

The last three sentences of this quotation apparently do not find support in the record.

We are in complete agreement with the appellant, and find no merit in appellee's position. All of the vital questions relied upon by her were settled against her contentions in San Augustine County, Texas v. Cameron County Water Improvement District, 5 Cir., 1953, 202 F.2d 932. Appellant tracked, in every material particular, the steps there approved as complying with the statutes and as constituting due process of law. We there stated, citing a number of Supreme Court cases (at page 935):

> "This composition in bankruptcy is in the nature of a proceeding *in rem* as it essentially determines a status. Publication of notice in the manner stated therefore constitutes due process, as to unknown creditors. With the filing of this petition, its approval by the judge, and the giving of notice in the manner stated, the fiscal affairs of the district become subject to the jurisdiction of the court of bankruptcy, * * *
>
> "It follows that the decrees above mentioned were rendered upon due process, that they are binding upon appellant, and have become *res judicata*. * * *"

No authority is cited to support appellee's contention that her mother's disabilities entitled appellee, her heir, to special treatment, and there was no proof or finding by the trial court of any fraud. In the San Augustine case, supra, we quoted from a decision of the Supreme Court, Huling v. Kaw Valley Railway & Improvement Company, 130 U.S. 559, 9 S.Ct. 603, 605, 32 L.Ed. 1045, the statement that "It is * * * the duty of the owner of real estate who is a non-resident, to take measures that in some way he shall be represented when his property is called into requisition; and, if he fails to do this, and fails to get notice by the * * * publications * * * required in such cases, it is his misfortune, and he must abide the consequences."[2] We there applied the same prin-

[2] 202 F.2d 932, 934-935.

ciple to bonds, using this language: "It was their duty to take measures to be informed when their bonds were called into question by this proceeding and they were warned by a reasonable publication of notice to appear and defend their interest."[3]

In a deposition given by appellee, it was revealed that she actually knew of the proceedings, whose final decree barred her participation in the plan of composition, more than a year before she initiated this action. The final decree foreclosing her rights had been entered more than three and one-half years prior thereto. It is difficult to understand how appellee was injured by what she claims was unseemly haste in bringing the bankruptcy proceeding initially to its conclusion.[4] She seems

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[3] The case of Bekins v. Compton-Delevan Irr. Dist., 9 Cir., 1945, 150 F2d 526, certiorari denied 326 U.S. 772, 66 S.Ct. 230, 90 L.Ed. 467, relied upon by appellee, has no application here. There, the Bekins appeared in response to published notice and filed their claim and the court set aside an amount to pay the bonds upon their surrender. The surrender was made after the time specified in the decree, and the court merely held that, notwithstanding this, the Bekins were entitled to be paid the money set aside in the decree to cover their claim. We have no similar situation here.

[4] In considering her contentions as epitomized in the quotations from her brief, Footnote 2, supra, it is helpful to set out, so that it can be seen at a glance, the chronology of the important events:

June 1, 1944. These bonds matured; the District had been in default in all its obligations since 1929.

Oct. 24, 1951. Chapter IX proceedings begun.

Oct. 24, 1951. Order requiring notice to be given that all claims must be filed 10 days before Jan. 11, 1952, and publication thereof duly made; followed by interlocutory decree of Jan. 11, 1952, extending the right of security holders to tender their securities for exchange at any time prior to entry of final decree.

June 27, 1952, final decree canceling claims which were not filed.

Nov. 17, 1952, Appellee's mother died.

Jan. 12, 1954, Appellee acquired bonds from representatives of her mother's estate.

Dec. 1, 1954, Appellee was advised of the bankruptcy proceedings which wiped out her bonds.

Jan. 11, 1956, This action was begun.

to concede that the more leisurely tempo observed in the proceedings in San Augustine, supra, where claims could be filed within one year from the final decree, was unexceptionable.

It is the fact of publication of notice which is important and not the period given in which claims may be filed, so long as that period is not so short as to condemn the whole proceeding as lacking in due process. We do not think that the period of more than five months provided in these proceedings was so brief as to work such a condemnation. Particularly is this true under the circumstances before us which reveal that appellee would not have been benefited if these proceedings had provided for a time limit more than three times that given in San Augustine.

It follows that the court below erred in recognizing appellee's claim and in entering its order amending the final decree originally entered, and that her petition should have been dismissed with prejudice.

For the entry of such on order, the decree appealed from is reversed and the cause remanded.

Reversed and remanded.

B-15

FILED

26th day of August, 1958

Edward W. Wadsworth
Clerk of the United States Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 16,748

GLADEVIEW DRAINAGE DISTRICT, PALM BEACH COUNTY, LORIDA, Public Debtor,
Appellant

v.

EDNA L. KEYES, ET AL,
Appellees

Appeal from the United States District Court for the Southern District of lorida

(August 26, 1958)

ON PETITION FOR REHEARING

Before CAMERON, JONES and BROWN, Circuit Judges.

PER CURIAM:

Upon considering appellee's Petition for Rehearing, it is ordered that the opinion filed herein on June 30, 1958, be and it is, modified as follows:

By excising footnote number 1 and changing the numbers of the remaining footnotes to correspond therewith.

By changing the word "improved" in line 15, page 5 of the slip opinion to the word, approved.

By striking out the words "and a half" in line 14, page 7 of said opinion.

By excising from footnote 5 of said opinion (to be renumbered 4) paragraph four thereof beginning "Jan. 11, 1952 order requiring" and ending "duly made" and substituting for said paragraph, the following:

> Oct. 24, 1951, Order requiring notice to be given that all claims must be filed 10 days before Jan. 11, 1952 and publication thereof duly made; followed by interlocutory decree of Jan. 11, 1952 extending the right of security-holders to tender their securities for exchange at any time prior to entry of final decree.

The clerk is directed to have said opinion so modified before it is published.

IT IS FURTHER ORDERED that, upon the making of said modifications, the Petition for Rehearing shall be

DENIED.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By: GILBERT F. GANUCHEAU
Deputy

New Orleans, Louisiana

B-17

JUDGMENT.

Extract from the Minutes of June 30, 1958.

GLADEVIEW DRAINAGE DISTRICT, PALM BEACH COUNTY, FLORIDA, Public Debtor,

NO. 16748

versus

EDNA L. KEYES, ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for the entry of an order in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellee, Edna L. Keyes, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

* * * *

FILE COPY

FILED
JAN 19 1959
JAMES R. ... Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 535.

EDNA L. KEYES ET AL., *Petitioner,*

vs.

GLADEVIEW DRAINAGE DISTRICT, PALM BEACH COUNTY, FLORIDA, Public Debtor,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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IN THE

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

ARGUMENT.

The decision of the Court of Appeals for the Fifth Circuit is in accord with the applicable decisions of this Court, does not deprive petitioner of rights granted her by a Federal statute or the Constitution of the United States and does not involve an important Federal question. Further-

more, the relief petitioner seeks is barred by Rule 60(b) of the Federal Rules of Civil Procedure.

1. There is no conflict with this Court's decision in *Nassau Smelting & R. Works* v. *Brightwood B. Fdry Co.*, 265 U.S. 269. The *Nassau Smelting* case did not involve a municipal debt composition proceeding nor the provisions of Chapter IX of the Bankruptcy Act (11 USC, § 401-403), which are controlling here.

Petitioner's contention that the plan as approved by the District Court improperly provided that "creditors are required, in order to participate in the Plan, to file proofs of their claims * * * at the time designated by the Court" and that "only those creditors who have filed claims shall participate in the Plan" (R. 9-10) is without merit. The plan as approved is completely in accord with the provisions of Chapter IX of the Bankruptcy Act.

Congress authorized and in fact directed that creditors file proofs of claim by providing that "Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition * * * and shall provide in the order that notice shall be given to creditors * * * *which shall specify the manner in which claims and interests of creditors shall be filed or evidenced*, on or before the date fixed for the hearing." Section 83(b) (11 USC, § 403(b)). (Emphasis supplied).

Congress further required in Section 83(f) of the Act (11 USC, § 403(f)) that:

> * * * the Court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided for

> therein, *and that the plan is binding upon all creditors affected by it,* * * * *whether or not their claims have been filed or evidenced* * * * (Emphasis supplied).

This is precisely what the District Court here did (R. 58-60).

This Court has specifically held that the Act and its provisions for notice to creditors are constitutional. *United States* v. *Bekins*, 304 U.S. 27. Accordingly, plan adopted and approved in compliance with its terms is binding on all creditors who are given proper notice whether they appear and participate or not. *Poinsett Lumber & Mfg. Co.* v. *Drainage Dist. No. 7*, (8 Cir.) 119 F.2d 270; *San Augustine County* v. *Cameron County Water I. Dist.*, (5 Cir.) 202 F.2d 932.

Petitioner's complaints regarding the wisdom of the plan are ill timed; they were properly the subject of an appeal from the final decree itself. There is no question that the District Court had jurisdiction of the holder of petitioner's bonds throughout the composition proceedings and that the final decree in those proceedings was entered in accordance with due process of law. *San Augustine County* v. *Cameron County Water I. Dist.*, *supra*. That final decree is therefore binding on petitioner and cannot be belatedly attacked in these proceedings. See *Chicot Co. Drainage District* v. *Baxter State Bank*, 308 U.S. 371.

2. Petitioner's claim even if meritorious is barred by Rule 60(b) of the Federal Rules of Civil Procedure, which are clearly applicable to these proceedings. See *Norris* v. *Camp*, (10 Cir.) 144 F.2d 1; *Cromelin* v. *Markwalter*, (5 Cir.) 181 F.2d 948.

Rule 60(b) provides six separate grounds upon which a party may seek relief from a final decree. The only

conceivable ground under which petitioner might seek to qualify is for "any other reason justifying relief from the operation of the judgment".

This Court has stated however that only extraordinary circumstances will justify relief under Rule 60(b) (6) and such circumstances must be alleged and proved. *Ackerman* v. *United States*, 340 U.S. 193. Petitioner has neither alleged nor proved nor attempted to allege or prove any circumstances, much less extraordinary circumstances, such as would justify relief from the operation of the final decree in these composition proceedings. The mere fact that petitioner feels the final decree in the composition proceedings was erroneous "does not constitute 'any other reason justifying relief' ". *Elgin Nat. Watch Co.* v. *Barrett*, (5th Cir.) 213 F.2d 776, 779-780.

Not only must petitioner show extraordinary circumstances justifying relief from the operation of the final decree, which she has failed to do, but her application for relief must also have been made within a reasonable time. This was clearly not done here. No application was ever made until more than three and one-half years after the entry of the final decree and no attempt has ever been made to excuse this neglect (R. 92). The only possible thing to which petitioner could point is the illness of her mother, a former owner of the bonds in question, ending with her death shortly after the entry of the final decree.

But this will not excuse the complete inaction for over three years of petitioner herself or of the personal representative of her mother's estate (R. 92). Even more important and conclusive on this point, petitioner took absolutely no action to gain relief from the final decree for more than a year after she personally learned of the composition proceedings (R. 60, 72). There was not and could not be any excuse for this delay.

Under the circumstances it is clear that petitioner's application for relief from the final decree was not filed within a reasonable time which in itself is a sufficient basis for denying the petition for a writ of certiorari. This is particularly true where, as the record shows here, some of the new refunding bonds were negotiated, all of the lands within the District were sold and the tax levies to pay off the new bonds were fixed, all in reliance on the final decree in the composition proceedings (R. 96-97). This Court should be reluctant to disturb a final decree on the faith of which persons have created vested interests and irretrievably changed their positions as is the case here. See *Elgin Nat. Watch Co.* v. *Barrett*, *supra*, p. 779.

CONCLUSION.

The petition for a writ of certiorari is without merit and should be denied.

Respectfully submitted,

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Miami 32, Florida,
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